

November 29, 2005

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Name of Case: Crystal View Enterprises, Inc.

Date of Filing: August 25, 2005

Case No.: TEE-0023

On August 25, 2005, Crystal View Enterprises, Inc.(Crystal) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that Crystal's request should be granted.

*I. Background*

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> This authority was created in response to the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies.

Form EIA-782B requests information from resellers and retailers of motor gasoline, No. 2 distillates, propane, and residual fuel oil. The form requests volume and price information for retail and wholesale sales.

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<sup>1</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B<sup>2</sup>. The form allows reporting volumes in thousands of gallons. Estimates can be used; however the basis must be consistent with the standard accounting records maintained by the firm.<sup>3</sup>

## II. Exception Criteria

OHA has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens."<sup>4</sup> Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

The following examples illustrate some of the circumstances that may justify relief from the reporting requirement. We have granted exceptions where: the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability;<sup>5</sup> the only person capable of preparing the report is ill and the firm cannot afford to hire outside help;<sup>6</sup> extreme or unusual circumstances disrupt a

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<sup>2</sup> Firms that account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<sup>3</sup> Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<sup>4</sup> 42 U.S.C. § 7194(a); see 10 C.F.R. § 1003.25(b)(2).

<sup>5</sup> *Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).

<sup>6</sup> *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).

firm's activities;<sup>7</sup> and a combination of factors render the reporting requirement an undue burden.<sup>8</sup>

At the same time, when considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. We have determined that mere inconvenience does not constitute a sufficient hardship to warrant relief.<sup>9</sup> Moreover, the fact that a firm is relatively small or that it has filed reports for a number of years does not alone constitute grounds for exception relief.<sup>10</sup> If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable.<sup>11</sup>

### *III. Crystal's Application for Exception*

Crystal is a small retailer of motor gasoline located in Pollock Pines, CA and was selected by EIA as a member of a sample group required to file Form EIA-782B beginning in September 2004. According to its submission, Crystal came to be owned and operated by Mr. and Mrs. Agahi when, after protracted illness, Mrs. Agahi's father passed away in November 2004.<sup>12</sup> Since that time Mr. and Mrs. Agahi have struggled to revive and maintain Crystal's business operations.<sup>13</sup> For financial reasons, ten employees have had to be let go, including cashiers, support staff, office personnel and two managers. Mr. and Mrs. Agahi are each working 70 hours per week and cannot afford to hire additional staff and the resources to complete and file EIA-782B are simply not available.

In order to fully consider the Crystal request and solicit any pertinent additional information, we contacted the firm

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<sup>7</sup> *Little River Village Campground Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. Of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

<sup>8</sup> *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner).

<sup>9</sup> *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

<sup>10</sup> See Section 10 of General Instructions to Form EIA- 782B.

<sup>11</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

<sup>12</sup> Crystal's application for exception, submitted to OHA on August 25, 2005.

<sup>13</sup> *Id.*

by telephone. Mrs. Agahi asserted that the firm is overwhelmed by the workload and the limited personnel available to complete tasks.<sup>14</sup> Mrs. Agahi also stated that the firm was first required to start completing the EIA-782B form in September 2004. She estimates that the firm pumps about 1.4 million gallons of gasoline per year.<sup>15</sup>

#### IV. Analysis

We have carefully examined the Crystal Application for exception, including the written and oral evidence and argument provided by the firm summarized above, and have concluded that exception relief is warranted. The firm has experienced drastic changes in recent periods and is clearly struggling to survive under the stewardship of Mr. and Mrs. Agahi -- relative newcomers to the firm as well as to the motor gasoline retail business-- and the requirement to prepare and file EIA-782B would at this point be unduly onerous. We have also weighed, in opposition, the public interest in the information that may be filed by Crystal against the likelihood of serious hardship, and have nonetheless concluded that a temporary exception should be granted to relieve Crystal of the EIA filing requirement.

IT IS THEREFORE ORDERED THAT:

- (1) The Application for Exception filed by Crystal View Enterprises, Inc. Case No. TEE-0023, be, and hereby is, granted as set forth in paragraph two below.
- (2) Crystal View Enterprises, Inc. is relieved of the requirement to file an EIA-782B report for the period of September 2004 to November 2006.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: November 29, 2005

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<sup>14</sup> Telephone conversation between Ronald D. Hester, OHA and Adorea C.M. Agahi, *Crystal View Enterprises, Inc.* September 7, 2005.

<sup>15</sup> *Id.*